

## UPDATED INFORMATIVE DIGEST

### SECTION 12903, NOTICE OF VIOLATION TITLE 22, DIVISION 2, CALIFORNIA CODE OF REGULATIONS

The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65 (hereinafter referred to as “the Act”), requires businesses to provide clear and reasonable warnings prior to knowingly and intentionally exposing individuals to chemicals that have been listed by the State as known to cause cancer or reproductive toxicity, unless otherwise exempt [Health and Safety Code Section 25249.6, 25249.10]. The Act also prohibits businesses from knowingly discharging listed chemicals into sources of drinking water, unless otherwise exempt [Health and Safety Code Section 25249.5, 25249.9].

Violations of either the warning requirement or the discharge prohibition are enforced through civil lawsuits filed by the Attorney General, by district attorneys, by specified city attorneys, or by any person acting in the public interest [Health and Safety Code Section 25249.7]. Under the Act, private party actions cannot commence until sixty days after the private party has given notice to the Attorney General, the district attorney (and, in certain cases, the city attorney) having jurisdiction, and the alleged violator, and none of the public officials has commenced and is diligently prosecuting an action against the violation. The notice provided by the private party is commonly referred to as the “sixty-day notice.”

The Act contains no further provisions regarding what information the sixty-day notice must include, nor does it provide guidance on how the sixty-day period is calculated.

The Office of Environmental Health Hazard Assessment (OEHHA) proposes to adopt a regulation which would set forth the information requirements that a sixty-day notice must meet, describe the manner by which such notice must be served, and define what constitutes a “sixty-day” period. A private party shall be precluded from proceeding with an enforcement action pursuant to the Act, unless the standards in the proposed regulation have been satisfied.